IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 230 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
BARODA CHAIN WORKS - Respondent(s)

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Appearance :
Mrs. Mona BHATT for Applicant(s) : 1,
MR SN SOPARKAR with Ms. Jolly R. Parikh for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 31/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Smt. Mona Bhatt, learned counsel for the Revenue and Mr. Saurabh Soparkar learned counsel for the assessee.

2. Following question has been referred to this Court for its opinion;

> *"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in confirming the Dy.CIT (A)'s decision that the value of gold ornaments of Rs. 1,20,000/-which was not accounted for in the books of accounts of assessee was assessable in A.Y. 1988-89 instead of A.Y. 1987-88 ?"*

Learned counsel for the Revenue submits that, from the facts it would clearly appear that on a raid made in the business premises of the firm certain incriminating articles were found the value of which was to the tune of Rs. 1,20,000/- and as this amount/bullion was not recorded in the account books the same should have been deemed to be the income of the assessee for such financial year. Referring to Section 69-A of the Income Tax Act, she submits that from the plain language of Section 69A it would clear that the income is required to be

added in the income of the assessee for financial year in which the property was found.

3. On the other hand, learned counsel for the assessee submitted that in the present matter Section 69A of the Act would not apply because the assessee had offered an explanation and the explanation was accepted by the authorities.

4. Section 69A of the Income Tax Act, 1961 reads as under;

> "***69A***. *Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion,*

jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

5. From the very reading of the Section, it would be clear that, where in a financial year the assessee is found to be owner of any money, bullion etc., and such money, bullion etc., is not recorded in the books of account maintained by the assessee from any source of income, ***and*** the assessee offers no explanation, or the explanation offered by him is not accepted as satisfactory one, then the said money, bullion etc., would be deemed to be income of the assessee for such financial year.

6. In the present case, the assessee made a submission that the money belonged to him from undisclosed source. So far as that finding of the Tribunal is concerned,

even if we do not approve the same because under the law an assessee is required to give an explanation relating to nature and source of acquisition of the money, bullion etc., the fact remains that the raid was made in February 1987, the Accounting Year would be Diwali 1986-Diwali 1987 and the Assessment Year would be 1988-89. In the present matter, though the reasonings given by the Commissioner of Income Tax (Appeals) and the Tribunal are not approved, but, as a fact, it is found that the provisions contained in Section 69-A have been complied with and the income and the value of the property which was found in the raid have been added as income for the Assessment Year 1986-87, i.e., Accounting Year 1988-89. The Reference, though can be answered in favour of the Department, but taking into consideration the totality of the circumstances, even for different reasons, we maintain the order passed by the Tribunal. The Reference stands disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

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